



DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Part 122

[Docket No. USCBP-2023-0002]

RIN 1651-AB43

Advance Passenger Information System: Electronic Validation of Travel

Documents

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: U.S. Customs and Border Protection (CBP) regulations require commercial air carriers to electronically transmit passenger information to CBP's Advance Passenger Information System (APIS) prior to an aircraft's departure to the United States from a foreign port or place or departure from the United States so that the Department of Homeland Security (DHS) can determine whether the carrier must conduct an additional security analysis or security screening of the passengers. CBP proposes to amend these regulations to incorporate additional commercial carrier requirements that would enable CBP to determine whether each passenger is traveling with valid, authentic travel documents prior to the passenger boarding the aircraft. The proposed regulations would also require commercial air carriers to transmit additional data elements through APIS for all commercial aircraft passengers arriving, or intending to arrive, in the United States in order to support border operations and national security and safety. Additionally, this proposal includes changes to conform existing regulations to current practice. Finally, the proposed regulations would allow commercial carriers to transmit an aircraft's registration number to CBP via APIS. This proposed rule is intended to increase the security and safety of the international traveling public, the

international air carrier industry, and the United States.

DATES: Comments must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Please submit comments, identified by docket number, by the following method:

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2023-0002.

Due to COVID-19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Due to relevant COVID-19-related restrictions, CBP has temporarily suspended its on-site public inspection of submitted comments.

FOR FURTHER INFORMATION CONTACT: Robert Neumann, Office of Field Operations, U.S. Customs and Border Protection, by phone at 202-412-2788.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the notice of proposed rulemaking. The Department of Homeland Security (DHS) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposal.

Comments that will provide the most assistance to the Department in developing these procedures will reference a specific portion of the proposed rule, explain the reason

for any recommended change, and include data, information, or authority that support such recommended change.

II. Statutory Authority

Multiple statutes require air carriers to electronically transmit passenger information to Customs and Border Protection (CBP) prior to arriving in or departing from the United States.¹ For instance, section 115 of the Aviation and Transportation Security Act (Public Law 107-71, 115 Stat. 623, Nov. 19, 2001) requires air carriers operating a passenger flight in foreign air transportation to the United States to electronically transmit a passenger manifest to CBP. *See* 49 U.S.C. 44909(c). Pursuant to this statute, the manifest must contain the following data for each passenger: full name; date of birth; citizenship; sex; passport number and country of issuance (if a passport is required for travel); U.S. visa number or resident alien card, as applicable; and such other information as the Administrator of the Transportation Security Administration (TSA), in consultation with the Commissioner of CBP, determines is reasonably necessary to ensure aviation safety. *See* 49 U.S.C. 44909(c)(2). The passenger manifest must be transmitted in advance of the aircraft landing in the United States in such manner, time, and form as CBP requires. *See* 49 U.S.C. 44909(c)(4).

Section 402 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107-173, 116 Stat. 557) requires a master or commanding officer, or the authorized agent, owner, or consignee of a commercial aircraft that is either departing the United States or arriving in the United States to transmit to CBP manifest information about each passenger on board. *See* 8 U.S.C. 1221(a)-(b). The manifest information

¹ Those statutes include, but are not limited to, section 115 of the Aviation and Transportation Security Act (Pub. Law 107-71, 115 Stat. 623, 49 U.S.C. 44909), section 402 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. Law 107-173, 116 Stat. 557, 8 U.S.C. 1221), section 4012 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. Law 108-458; 49 U.S.C. 44909(c)), and certain authorities administered by the Transportation Security Administration (TSA) (49 U.S.C. 114, 49 CFR parts 1550, 1544, 1546).

must contain the following information: complete name; date of birth; citizenship; sex;² passport number and country of issuance; country of residence; U.S. visa number, date and place of issuance, where applicable; alien registration number, where applicable; and U.S. address while in the United States. *Id.* The Secretary of Homeland Security (Secretary) may also require additional manifest information if the Secretary, in consultation with the Secretary of State and the Secretary of the Treasury, determines that the information is necessary for the identification of the persons transported, the enforcement of the immigration laws, or the protection of safety and national security. *See* 8 U.S.C. 1221(c); 8 U.S.C. 1103(a)(1). Together, these and other applicable broad statutes cited as authority for CBP's Advance Passenger Information System (APIS) regulations allow CBP to require that commercial air carriers transmit to CBP manifest information relating to each individual traveling onboard an aircraft arriving in or departing from the United States and specify the type of information that must be submitted.³

Additionally, section 4012 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) (Public Law 108-458, 118 Stat. 3638) requires DHS to perform security vetting of passengers on board aircraft bound for or departing from the United States prior to the departure of the aircraft. Specifically, section 4012 requires DHS to compare passenger information for any international flight to or from the United States against the consolidated and integrated terrorist watch list maintained by the Federal Government before departure of the flight. *See* 49 U.S.C. 44909(c)(6). IRTPA authorizes the Secretary of Homeland Security to issue regulations to implement these

² APIS allows carriers to transmit male, female, or any gender code included on a Government-issued ID. *See* DHS Consolidated User Guide Part 4 – UN/EDIFACT Implementation Guide, September 6, 2016, available at https://www.cbp.gov/sites/default/files/assets/documents/2016-Sep/DHS_CUG_v4%202_09-06-2016_Pt%204_EDIFACT.pdf (last accessed October 29, 2021).

³ Additional document validation procedures and advance data submitted through APIS supports CBP's mission to identify and interdict nefarious actors before departing to and from the United States. *See* 6 U.S.C. 211. For more information regarding the purpose of the proposed regulations see section IV.

requirements. Regulations implementing section 4012 of IRTPA were published on August 23, 2007 (72 FR 48320). Those regulations are described below.

III. Background and Current Requirements

Current CBP regulations require commercial air carriers to transmit information electronically to CBP for individuals traveling or intending to travel to or from the United States on board an aircraft. The focus of this proposed rulemaking is commercial aircraft arriving in or departing from the United States. Unless otherwise specified, use of the term “carrier” throughout this proposed rulemaking refers to “commercial air carriers.”⁴ Section 122.49a of title 19 of the Code of Federal Regulations (19 CFR 122.49a) specifies the information that commercial carriers must transmit for each passenger checked in for a flight arriving in the United States from a foreign place.⁵ Title 19 CFR 122.75a specifies the information that commercial carriers must transmit for each passenger checked in for an aircraft departing the United States for a foreign place.⁶ Under the current APIS regulations, carriers submit passenger data to CBP between 72 hours and 30 minutes before departure, and no later than securing the aircraft doors for individual submissions. The required information varies depending on whether the aircraft is departing or arriving, but it generally must include: the passenger’s name; date of birth; sex; citizenship; status on board the aircraft (*i.e.*, passenger); travel document type; passport number, country of issuance, and expiration date (if a passport is required); location of boarding and departure; and the date of arrival or departure for each individual.

⁴ Separate regulations that address electronic manifest requirements for crew and non-crew members arriving in or departing from the United States by commercial aircraft, *see* 19 CFR 122.49b, 122.75b, and individuals onboard private aircraft arriving in and departing from the United States, *see* 19 CFR 122.22, are not affected by this proposed rulemaking.

⁵ CBP regulations do not require commercial air carriers to transmit this information to CBP for active-duty U.S. military personnel being transported as passengers on Department of Defense commercial chartered aircraft. 19 CFR 122.49a(c), 122.75a(c).

⁶ A more detailed description of the history of electronic manifest information requirements, and the relevant authorities, is set forth in the APIS final rule published on April 7, 2005 (70 FR 17820) and the pre-departure final rule published on August 23, 2007 (72 FR 48320).

Carriers have two options for transmitting the required information to CBP.

Under the first option, a carrier uses an interactive electronic transmission system that is capable of transmitting data to APIS and receiving electronic messages from CBP. *See* 19 CFR 122.49a(b)(1)(ii)(B), 122.49a(b)(1)(ii)(C), 122.75a(b)(1)(ii)(B), and 122.75a(b)(1)(ii)(C). Before using an interactive electronic transmission system, the carrier must subject its system to CBP testing, and CBP must certify that the carrier's system is capable of interactively communicating with the CBP system for effective transmission of manifest data and receipt of appropriate messages in accordance with the regulations. *See* 19 CFR 122.49a(b)(1)(ii)(E) and 122.75a(b)(1)(ii)(E). Once CBP certifies the interactive electronic transmission system, the carrier may use it to transmit the required electronic data. The vast majority of commercial carriers use an interactive CBP-certified transmission system.

Under the second option, the carrier may electronically transmit the required information through a non-interactive electronic transmission system approved by CBP. *See* 19 CFR 122.49a(b)(1)(ii)(A) and 122.75a(b)(1)(ii)(A). This includes the electronic Advance Passenger Information System (eAPIS), which is an online transmission system that meets all APIS data element requirements for all mandated APIS transmission types. eAPIS is a web-based transmission system that can be accessed through the internet.

Regardless of the transmission method, carriers must transmit the required information through APIS to CBP prior to the securing of the aircraft, with certain transmission methods requiring transmission no later than 30 minutes prior to securing of the aircraft.⁷ *See* 19 CFR 122.49a(b)(2) and 19 CFR 122.75a(b)(2). After receiving a transmission of APIS manifest information either through a CBP-certified transmission

ry personnel being transported as passengers on Department of Defense commercial chartered aircraft. 19 CFR 122.49a(c), 122.75a(c).

system or through eAPIS, CBP stores APIS information in a data system called TECS.⁸ CBP simultaneously transfers this information to the Automated Targeting System (ATS)⁹ to perform multiple enforcement and security queries against various databases, including multiagency law enforcement databases and the terrorist watch list.¹⁰

After performing the security vetting, the CBP system transmits to the carrier an electronic message. This message is generally referred to as CBP's response message. If the carrier is using an interactive transmission system, the response message provides certain instructions to the carrier. Specifically, it states whether each passenger is authorized to board, requires additional security screening, or is prohibited by TSA from boarding based on the security status of the passenger. Depending on the instructions received in the response message, the carrier may be required to take additional steps, including coordinating secondary security screening with TSA, before loading the baggage of or boarding the passenger at issue. If the carrier is using eAPIS, the CBP system will send a message to the carrier through a non-interactive method, such as email, that states whether the flight is cleared, meaning that no passengers were identified

⁸ CBP retains APIS information in TECS for 13 months. TECS is the name of a computerized information system designed to identify individuals and businesses suspected of violations of federal law. TECS also serves as a communications system permitting the transmittal of messages between CBP and other national, state, and local law enforcement agencies. While the term "TECS" previously was an acronym for the Treasury Enforcement Communications System, it is no longer an abbreviation and is now simply the name of the system. For more information, see DHS's Privacy Impact Assessments on TECS at <https://www.dhs.gov/publication/tecs-system-cbp-primary-and-secondary-processing-tecs-national-sar-initiative>.

⁹ ATS is a decision support tool that compares traveler, cargo, and conveyance information against law enforcement, intelligence, and other enforcement data.

¹⁰ CBP retains APIS information in TECS for 13 months and ATS for 15 years. CBP uses such data for all routine purposes permitted by the ATS System of Records Notice (SORN) and the APIS SORN. CBP shares passenger data automatically with other law enforcement and national security partners pursuant to agreements with those partners for use throughout a period of time specified by the relevant agreement. CBP's current APIS regulations contemplate such sharing. *See* 19 CFR 122.49a(e), 122.75a(e). For further details, please see the APIS SORN, ATS SORN, privacy impact assessments regarding APIS and ATS, and section VI.F. CBP's privacy impact assessments are available at <https://www.dhs.gov/privacy-documents-us-customs-and-border-protection>.

as not being cleared for boarding. If the flight is not cleared, the carrier is required to contact TSA in order to resolve the security status of one or more passengers.¹¹

IV. Purpose of Rule and APIS Document Validation Program

Although CBP currently uses APIS to compare the passenger information submitted by the carriers to various law enforcement databases and the terrorist watch list, to enhance national security and safety, CBP and the air carrier industry, under the governing statutes and regulations, continue to take steps to further strengthen the quality of the results and protect vital industries and the public. To further improve CBP's vetting processes with respect to APIS data and enhance communication with air carriers, CBP proposes to amend its regulations to require carriers to ensure that their systems are capable of accepting document validation instructions from CBP's system and to contact CBP, if necessary, to take appropriate action to resolve the travel document status of each passenger intending to board an aircraft arriving in or departing from the United States.

To mitigate the risk regarding the potential use of fraudulent or invalid travel documents, in 2013 CBP implemented the voluntary Document Validation Program (DVP), which enables CBP to use APIS to vet the validity of each travel document and provide an electronic response message, either via response message or email, to the carriers as a result of that vetting. Under the DVP, APIS vets the information transmitted by carriers by comparing the information to CBP's databases, which include access to information regarding valid Department of State-issued U.S. passports and U.S. visas, DHS-issued Permanent Resident Cards, Electronic System for Travel Authorization (ESTA) approvals, and Electronic Visa Update System (EVUS) enrollments.¹² APIS

¹¹ CBP regulations, procedures, and actions may be subject to oversight by the DHS Office for Civil Rights and Civil Liberties, the Privacy Office, the Office of General Counsel, and the Office of Inspector General. *See* 6 U.S.C. 345; 6 U.S.C. 113; 6 U.S.C. 142; 42 U.S.C. 2000ee-1.

¹² Nonimmigrants intending to travel under the Visa Waiver Program (VWP) must have a valid ESTA approval prior to travel. *See* 8 CFR part 217. Nonimmigrants who hold a passport issued by a country identified for inclusion in EVUS containing a U.S. nonimmigrant visa of a designated category are required to enroll in EVUS. *See* 8 CFR part 215. EVUS enrollment is currently limited to nonimmigrants who hold

then transmits a response message to the carriers participating in the voluntary program. Unlike the original (non-DVP) response message, which contains one element, the DVP response message contains two elements. The first element indicates the security status of each passenger, as required by current regulations. *See* 19 CFR 122.49a(b) and 122.75a(b). The second element states whether each passenger's travel documents have been validated, meaning that the travel document was matched to a valid, existing travel document in CBP's databases. Multiple carriers participate in the voluntary program and have updated their transmission systems in order to receive the document validation message.

The voluntary DVP has enabled CBP to more efficiently identify passengers attempting to use fraudulent travel documents and electronically communicate that information to air carriers. As a result, carriers have prevented those passengers from boarding aircraft destined for or departing from the United States. For example, in 2016, a participating carrier received a response message from CBP stating that seven passengers on one flight had travel documents that could not be validated. The carrier therefore refused to board the passengers. Later investigations revealed that all seven passengers were attempting to travel with visa numbers that had been reported as lost or stolen. In 2017, a participating carrier refused to board a passenger whose visa could not be validated by CBP. Although the visa appeared authentic and showed the passenger's name, the passenger's date of birth did not match the date of birth listed for the visa in CBP's databases. As a result, the visa was not validated, and the carrier refused to board the individual. An investigation indicated that the passenger likely shared a name with his father and was attempting to travel using a visa issued to his father.

unrestricted, maximum validity B-1 (visitor for business), B-2 (visitor for pleasure), or combination B-1/B-2 visas, contained in a passport issued by the People's Republic of China.

These examples demonstrate that document validation instructions have the potential to increase security and safety for the commercial air industry and the United States and significantly improve rapid communication between CBP and air carriers. Without mandatory requirements, however, not all carriers will take the steps necessary to electronically receive CBP's document validation instructions and contact CBP prior to issuing boarding passes to passengers whose travel documents are not validated.

In addition to enhancing document validation procedures, CBP proposes to require carriers to transmit additional contact data for all passengers on commercial flights arriving in the United States to support CBP border and national security missions and safety. The proposed additional requirements assist CBP in identifying and locating individuals suspected of posing a risk to national security and safety and aviation security before departing to and from the United States. For instance, in December 2009 an individual suspected of receiving explosives training arrived in the United States from Pakistan. That individual was later linked to the failed detonation of a vehicle-borne improvised explosive device at Times Square in New York City using data related to the individual's flight to the United States. DHS was ultimately able to interdict the individual just as he was about to board an international flight. Although DHS was able to prevent this individual from boarding an international flight at the last minute, additional contact information including a primary and alternative phone number and email address will better assist CBP in identifying and locating potential nefarious actors in the future. Additionally, prior to September 11, 2001, CBP refused entry to the so-called "20th hijacker." CBP concluded, after its review of this incident, that the inclusion of a phone number, alternate phone number, and email address would have provided CBP with an opportunity to identify other individuals associated with the traveler.

In addition to terrorism-related concerns, the inclusion of these additional data elements would also increase CBP's ability to investigate or respond to suspected crimes

occurring on international flights. For example, in 2013, a passenger was suspected of kidnapping his daughter and taking her on a flight to Jamaica to avoid U.S. authorities. CBP was ultimately able to help locate the missing child. Had the passenger been required to provide a phone number, email information and U.S. address, CBP could have located the child more quickly.

As a result of these and other incidents, CBP has concluded that the inclusion of a primary and alternative phone number, email address, and address while in the United States for all passengers (other than those in transit to a location outside the United States) will enable CBP to further mitigate risks to border, national and aviation security.

V. Proposed Requirements

CBP is proposing four main changes to CBP's regulations in this Notice of Proposed Rulemaking. First, CBP proposes to require carriers to participate in the DVP program in order to receive the document validation message from CBP and to contact CBP regarding any passengers whose travel documents cannot be validated. Second, CBP proposes to require carriers to transmit additional data elements for all passengers on commercial flights arriving in the United States. Third, CBP proposes to enable carriers to include an aircraft's registration number as an optional data element in the APIS transmission. Fourth, CBP proposes several changes to conform the regulations to current practice. Each proposal is discussed in detail below.

A. Document Validation Message, Requirement to Contact CBP, and Recommendation Not to Board

Title 19 CFR 122.49a describes the electronic manifest requirement for passengers onboard commercial aircraft arriving in the United States. Title 19 CFR 122.75a describes the electronic manifest requirement for passengers onboard commercial aircraft departing from the United States. Both sections require the appropriate official of a commercial aircraft arriving in or departing from the United States to transmit through APIS to CBP an electronic passenger arrival or departure

manifest. The arrival and departure manifest requirements are nearly the same and specify the transmission methods, the information that must be included in the manifest, and the applicable exceptions.

CBP proposes to add a new paragraph (c) to both 19 CFR 122.49a and 122.75a. The new paragraphs would be identical for both sections. The new paragraphs would be divided into two sub-paragraphs and would describe the document validation message and the recommendation not to board passengers whose travel documents cannot be validated. This proposed rule differs from current practice in three respects. First, this proposed rule would enable CBP to more efficiently validate the travel documents of each passenger. Second, this proposed rule would require the carrier to receive a second message from CBP stating whether the passenger's travel documents are validated. Third, the proposed rule would require the carrier to take appropriate action if CBP is unable to validate the travel documents of a passenger.

1. Document Validation Message

Proposed paragraphs (c)(1) to 122.49a and 122.75a describe the required process for the document validation message. The general process is as follows. After a carrier transmits passenger manifest information to CBP through APIS, CBP responds to the carrier with a document validation message.

The carrier would be required to ensure its transmission system is capable of receiving the document validation message. For carriers using an interactive transmission method, APIS would transmit the document validation message through the interactive system. The document validation message from CBP would state whether CBP's system matched each passenger's travel documents to a valid, existing travel document in CBP's databases.

This proposal would add two new definitions in 19 CFR 122.49a(a) to define terms used in 122.49a and 122.75a. A "travel document" would be defined as any

document or electronic record presented for travel to or from the United States, including DHS-approved travel documents, U.S.-issued visas, Electronic System for Travel Authorization (ESTA) approvals, and Electronic Visa Update System (EVUS) enrollments. “DHS-approved travel document” would be defined as a document approved by DHS for travel in or out of the United States, such as a passport or other Western Hemisphere Travel Initiative (WHTI) approved document.

2. Requirement to Contact CBP

If the document validation message states that the CBP system could not validate a passenger’s travel documents and the carrier is unable to resolve the issue on its own, the carrier would be required to contact CBP prior to issuing a boarding pass to that passenger or allowing the passenger to board the aircraft. However, the carrier would not be required to contact CBP for individuals who are ineligible to travel or will not travel on the flight.

To facilitate the document validation process, and prior to contacting CBP, a carrier using an interactive transmission method may transmit additional biographical information as listed in paragraph (b)(3) of 19 CFR 122.49a and 122.75a.¹³ For example, for a passenger with more than one travel document whose name appears differently on the travel documents, the carrier may transmit the names as they appear on each travel document. If, after submitting the additional biographical information, the CBP document validation message states that the passenger’s travel documents were validated, the carrier is not required to contact CBP to resolve that passenger’s travel document status prior to issuing a boarding pass to that passenger.

¹³ Biographical information refers to the information set forth in the proposed 19 CFR 122.49a(b)(3)(i) through (v), (vii) through (xi), and (xiii) for arriving aircraft and 19 CFR 122.75a(b)(3)(i) through (iv), and (vi) through (xi) for departing aircraft. That is: full name; date of birth; gender; citizenship; country of residence (for arriving passengers); DHS-approved travel document type, number, country of issuance, and expiration date (if a DHS-approved travel document is required); alien registration number (where applicable), and passenger name record locator (if available).

For carriers using a non-interactive transmission method, the CBP system would respond to the carrier with a document validation message indicating whether the flight was cleared. The carrier must ensure that it is capable of receiving the document validation message through a non-interactive method, such as email. A cleared flight for document validation purposes means that the CBP system matched each passenger's travel documents to a valid, existing travel document in CBP's databases. If the document validation message states that the CBP system was unable to clear the flight, the carrier must contact CBP prior to issuing any boarding passes for that flight or boarding any passengers. Upon the carrier contacting CBP, CBP would provide the carrier additional details as to which passenger's travel documents could not be validated.

3. Recommendation Not to Board

Proposed paragraph (c)(2) of 19 CFR 122.49a and 122.75a states that if CBP is unable to validate a passenger's travel documents even after the carrier has contacted CBP, CBP would issue a recommendation to the carrier not to board the passenger. However, it is within the discretion of the carrier whether to board the passenger upon receiving CBP's recommendation.¹⁴

B. Additional APIS Data Elements

The required data elements in the electronic passenger arrival manifest are specified in 19 CFR 122.49a(b)(3). CBP proposes to amend this provision to require the carrier to transmit four additional data elements for each passenger in the arrival manifest: phone number with country code, alternative phone number with country code, email address, and address while in the United States. The carrier would be required to transmit an address in the United States for all passengers, except for passengers who are in transit to a location outside the United States.

¹⁴ CBP cannot require that a passenger be denied boarding. However, if an air carrier boards a passenger who is then denied entry to the United States, the air carrier may have to pay a penalty and bear the costs of transporting that passenger out of the United States.

Under current regulations, carriers are not required to transmit a U.S. address for U.S. citizens, lawful permanent residents (LPRs), and those in transit to locations outside the United States. *See* 19 CFR 122.49a(b)(3)(xii). When promulgating the current regulations, CBP explained that a U.S. address for U.S. citizens and LPRs could be obtained through other means. *See* 70 FR 17829-17830. The primary method for obtaining these addresses in 2005 was the Customs Declaration Form 6059B, which is a paper form filled out by the traveler upon arrival in the United States. Since 2005, CBP has automated much of the processing of arriving passengers. As a result, the collection of an address from U.S. citizens and LPRs through the Customs Declaration is no longer effective for use with all of CBP's electronic systems. Accordingly, CBP has determined that the collection of a U.S. address from U.S. citizens and LPRs prior to arrival and through the electronic APIS process is necessary to ensure that CBP has the information in a timely manner and in a format that can be easily accessed. Once the proposed APIS regulatory changes are implemented, other regulatory changes may be proposed to reduce redundancies in the collection of personal information. However, the proposed APIS changes are foundational before other changes to information collection can be made.

Under current regulations, carriers are not required to transmit through APIS a phone number with country code, alternative phone number with country code, or email address for any passenger. Requiring this additional contact information through APIS for all passengers arriving in the United States, including U.S. Citizens, LPRs, and visitors provides CBP with additional avenues to identify and locate individuals suspected of posing a risk to national security and safety and aviation security.

In addition to promoting national security and safety, the collection of these additional data elements would also enable CBP to further support the efforts of the Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), to monitor and conduct contact tracing related to public health

incidents. In 2017, the CDC promulgated regulations requiring any airline arriving in the United States to make certain data available to the CDC Director for passengers or crew who may be at risk of exposure to a communicable disease, to the extent that such data is already available and maintained by the airline. *See* 82 FR 6890 (Jan. 19, 2017) and 42 CFR 71.4. CBP also provides support to the CDC pursuant to 42 U.S.C. 268, which states that it “shall be the duty of the customs officers . . . to aid in the enforcement of quarantine rules and regulations.” Pursuant to these authorities, DHS and HHS have developed procedures and technical infrastructure that facilitate DHS sharing traveler information with HHS upon request, including safeguards for data privacy and security.

In response to the COVID-19 pandemic, the CDC issued an interim final rule (IFR) on February 12, 2020 (85 FR 7874), requiring that “any airline with a flight arriving into the United States, including any intermediate stops between the flight’s original and final destination, shall collect and, within 24 hours of an order by the Director [of the CDC], transmit to the Director” certain data regarding passengers and crew arriving from foreign countries “for the purposes of public health follow-up, such as health education, treatment, prophylaxis, or other appropriate public health interventions, including travel restrictions.” Pursuant to the IFR, airlines must submit the following five data elements to CDC with respect to each passenger and crew member, to the extent that such information exists for the individual, and in a format acceptable to the Director when ordered by CDC to do so: full name, address while in the United States, email address, primary phone number, and secondary phone number. According to the CDC, these data elements are the most useful for responding to a critical health crisis. In light of COVID-19, CBP issued a Privacy Impact Assessment (PIA) documenting CBP efforts to support the CDC public health response.¹⁵

¹⁵ For more information, please access <https://www.dhs.gov/publication/dhscbppia-066-cbp-support-cdc-public-health-contact-tracing>.

If this proposed rule is implemented and the carrier submits the required information through APIS, CBP would also have the ability to share these data elements with the CDC upon its request, using existing communication channels between DHS and HHS, which would mitigate the need for airlines to separately transmit the same information to the CDC if the airline has already transmitted the necessary information to CBP.

Lastly, the proposed regulations were developed to comply with the United States' international obligations.¹⁶ The International Civil Aviation Organization (ICAO), of which the United States is a contracting state, directs contracting states to use a single window to collect advance passenger information from air carriers and then provide necessary data to agencies that require the information, rather than require individual transmissions from carriers to each relevant agency within one contracting state. Convention on International Civil Aviation, 61 Stat. 1180, 15 U.N.T.S. 295, Annex 9, SARP 9.1 (Chicago, 1944) (Chicago Convention). The Chicago Convention is the international agreement which established the ICAO and ICAO standards and recommended practices (SARPs). In accordance with the ICAO SARPs covering advance passenger information (API), CBP is using APIS to collect data from carriers that can be provided to other agencies that require the information. This ensures that carriers are required to provide only one electronic API message to the U.S. government, which can be used to satisfy the needs of multiple government agencies.

ICAO permits contracting states to establish rules that deviate from the SARPs, so long as the contracting state notifies ICAO of the deviation by filing a difference. Chicago Convention, art. 38. The United States currently files a difference with ICAO concerning Annex 9, SARP 9.10, which requires contracting states to require as advanced

¹⁶ Nothing in the proposed rule is intended to change existing bilateral agreements between the United States and other entities.

passenger information only data elements that are available in machine readable form on accepted travel documents. The United States already files a difference under SARP 9.10 because CBP requires carriers to collect street address and country of residence, which are not available in machine readable form on accepted travel documents. *See* 19 CFR 122.49a(b)(3). The additional data elements that DHS is now proposing (primary phone number with country code, alternative phone number with country code, and email address) similarly are not available in machine readable form on accepted travel documents. Therefore, the United States would need to amend the difference that is already on file with ICAO to include the additional data requirements under the proposed regulations.

C. Changes Conforming Regulations with Current Practices

1. Close-Out Message

Carriers must submit passenger manifest information to CBP upon the aircraft's departure or arrival. Pursuant to existing regulatory requirements, carriers may use an interactive transmission option to transmit a "close-out message" not later than 30 minutes after securing the aircraft. *See* 19 CFR 122.49a(b)(1)(ii)(B) and (C) and 19 CFR 122.75a(b)(1)(ii)(B) and (C). The close-out message includes a header (information about the carrier sending a secure link to CBP), flight information (flight number, departure time, estimated arrival time), and passenger manifest information. This option is described in 19 CFR 122.49a(b)(1)(ii)(B) and (C) for arriving aircraft and section 19 CFR 122.75a(b)(1)(ii)(B) and (C) for departing aircraft. The current regulations permit the carrier to select one of two ways to format the close-out messages. Under the first option, the carrier can transmit a message for any passengers who checked in but who were not onboard the flight. Under the second option, the carrier can transmit a message for all passengers who boarded the flight.

CBP proposes to amend 19 CFR 122.49a(b)(1)(ii)(B) and (C) and 19 CFR 122.75a(b)(1)(ii)(B) and (C) to eliminate the option to transmit messages for any passengers who checked in but who were not onboard the flight. Carriers subject to these provisions would be required to transmit a close-out message that identifies all passengers onboard the flight.

Allowing carriers to transmit a message identifying passengers who checked in but were not onboard the flight has impeded CBP's efforts to document who was actually on board a flight. Under the current regulations, a carrier could submit a close-out message that only identifies individuals who checked in but did not board the flight. This allows for instances where an individual reserves a flight, the carrier transmits APIS data that includes this individual to CBP, then the individual cancels before checking in. A carrier that transmits a close-out message identifying only individuals that checked in but did not board would not indicate that this passenger also did not board because the passenger never checked in. CBP would then consider that the individual described above was onboard the flight. Because of this discrepancy, carriers have ceased transmitting close-out messages that transmit a message only identifying those individuals who checked in but who were not onboard the flight. Instead, it is common practice for carriers to transmit a message identifying only those individuals who boarded the flight. CBP proposes to amend the regulations to reflect the current practice.

2. U.S. Electronic Data Interchange for Administration, Commerce and Transport (U.S. EDIFACT) Format

19 CFR 122.49a(b)(1)(i) and 19 CFR 122.75a(b)(1)(i) state that a passenger manifest must be transmitted separately from a crew member manifest if the transmission is in U.S. EDIFACT format. CBP proposes to eliminate the references to U.S. EDIFACT.

In March 2003, the World Customs Organization adopted the U.N. EDIFACT format as the global standard for advance passenger information messaging. As a result, when CBP published the final rule requiring the transmission of passenger manifest information through APIS, CBP announced that U.N. EDIFACT would be the mandatory format 180 days after the publication of the final rule. *See* 70 FR 17831 (Apr. 7, 2005). Because U.N. EDIFACT is now the mandatory format for APIS transmissions, the references to U.S. EDIFACT in 19 CFR 122.49a and 122.75a are no longer necessary and would be removed.

3. 2005 Exception

19 CFR 122.49a(b)(3) lists the data elements that must be transmitted in the arrival manifest. 19 CFR 122.75a(b)(3) lists the data elements that must be transmitted in the departure manifest. Both sections state that certain information is not required until after October 4, 2005. As this exception no longer applies, the language is no longer necessary and would be removed.

4. DHS-Approved Travel Document

In accordance with section 7209 of the IRTPA, the Secretary of Homeland Security is authorized to require passengers entering the United States from the Western Hemisphere to present a passport or other documents that the Secretary of Homeland Security has determined to be sufficient to denote identity and citizenship. *See* Public Law 108-458, 118 Stat. 3638 (Dec. 17, 2004). In order to reflect the inclusion of travel documents, in addition to passports, which are approved for travel to or from the United States in certain situations, CBP proposes to amend 19 CFR 122.49a(b)(3) and 122.75a(b)(3) to replace the references to “passport” with “DHS-approved travel document.” As stated above, “DHS-approved travel document” would be defined as a travel document approved by the U.S. Department of Homeland Security for travel in or

out of the United States, such as a passport, or other Western Hemisphere Travel Initiative (WHTI) approved document.¹⁷

Further, 19 CFR 122.49a(b)(3) and 122.75a(b)(3) list the data elements that must be included in the passenger manifest and require a carrier to submit each passenger's travel document type (*e.g.*, passport), passport number, passport country of issuance, and passport expiration date (if a passport is required). Under the proposed amendments, carriers would instead be required to transmit the DHS-approved travel document type, DHS-approved travel document number, DHS-approved travel document country of issuance, and DHS-approved travel document expiration date.

D. Optional Additional Data Element: Aircraft Registration Number

As discussed above, carriers that use an interactive transmission option must transmit the close-out message not later than 30 minutes after securing the aircraft. *See* 19 CFR 122.49a(b)(1)(ii)(B) and (C) and 19 CFR 122.75a(b)(1)(ii)(B) and (C). CBP proposes to permit carriers that use an interactive electronic transmission system to include the aircraft's registration number in the close-out message.

The change is proposed as part of CBP's efforts to automate the General Declaration (CBP Form 7507). The General Declaration is a paper form submitted by owners or operators of commercial aircraft to CBP at the time of an aircraft's departure from or arrival to the United States. The General Declaration includes information on the arrival and departure of aircraft entering or departing the United States, the flight itinerary, and passenger and crew information. One of the required data elements of the CBP Form 7507 is the aircraft's registration number. This data element is not collected through any other means and is critical to CBP operations. If CBP automates CBP Form 7507 through a subsequent rulemaking, it is likely that transmission through APIS would be one option for a carrier to continue transmitting the aircraft registration number to

¹⁷ For more information on WHTI, see 73 FR 18383 (Apr. 3, 2008).

CBP. Unless and until the existing regulatory requirements change regarding submission of Form 7507, carriers that transmit the aircraft's registration number in APIS will still need to submit the General Declaration.

VI. Statutory and Regulatory Reviews

A. Executive Order 12866 and 13563

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated as a "significant regulatory action" under section 3(f) of Executive Order 12866.

Accordingly, the Office of Management and Budget (OMB) has reviewed this regulation.

Purpose of Rule

Entry into the United States by U.S. citizens and foreign travelers via air travel requires certain travel documents containing biographical information, such as a passenger's name and date of birth. As a security measure, CBP compares the information on passengers' documents to various databases and the terrorist watch list and recommends that air carriers deny boarding to those who are likely to be deemed inadmissible upon arrival in the United States. However, current processes for advising carriers regarding passengers who may be presenting fraudulent travel documents would be improved through CBP providing electronic messages to carriers indicating if the false information on their documents does not match the information in CBP databases. This proposed rule would allow CBP to add a document validation message to the electronic messages currently exchanged between air carriers and CBP prior to departure to the United States from a foreign port or place or departure from the United States. The

addition of the proposed electronic validation of travel documents and response messaging to carriers to the pre-boarding vetting process would allow CBP and carriers to more efficiently identify and prevent those passengers with fraudulent or improper documents from traveling to the United States. The proposed rule would also reduce the number of errors in CBP records that must be corrected by CBP officers during inspections.

The proposed rule also would require carriers to transmit additional passenger information to CBP, including phone number with country code, alternative phone number with country code, email address, and address while in the United States. The carrier would be required to transmit an address in the United States for all passengers, except for passengers who are in transit to a location outside of the United States. Submission of such information would enable CBP to identify and interdict more quickly individuals posing a risk to border, national, and aviation safety and security. Collecting these additional data elements would also enable CBP to further assist CDC to monitor and trace the contacts of those involved in serious public health incidents, when CDC requests such assistance from CBP.

Finally, the proposed rule would give carriers the option to include the aircraft registration number in their electronic messages to CBP and would make technical changes to conform with current practice.

Background

United States citizens traveling outside the United States require a passport or other WHTI-approved travel document to re-enter the United States. Foreign travelers coming to the United States by air must possess either a visa or approval under the Electronic System for Travel Authorization (ESTA), in addition to other appropriate travel documentation, such as a foreign passport, to be presented to CBP for inspection

when required.¹⁸ Though a visa or ESTA approval is not required to purchase a ticket, it is required to check in for a flight. When a traveler arrives at an airport for a flight, the carrier is required to check the ticket and travel documents to confirm the document appears to be valid for travel to the United States, and the passenger is the person to whom the travel document was issued. Current regulations also require air carriers to submit information electronically for each individual traveling or intending to travel to or from the United States, including passengers, crew, and non-crew. The required information is different for flights departing from and arriving in the United States, but generally includes biographical information, such as a passenger's name, date of birth, sex, status on the aircraft, passport type and number, country of issuance, expiration date, and departure or arrival details. CBP checks these details against various databases and the terrorist watch list and sends a response in the form of numbers and letters to the carrier, indicating whether the passengers are cleared to board or if CBP recommends they not be boarded.¹⁹ Under this proposed regulation, as part of the Document Validation Program (DVP) and in addition to current checks, CBP would also include in the response message to carriers a character that indicates whether a passenger's travel documents are validated.

Carriers submit required electronic manifest information to CBP through APIS. Most large, commercial operators use a CBP-certified interactive system capable of transmitting and receiving messages to or from APIS electronically. Beginning 72 hours before the departure time, carriers may submit individual records or batches of passenger

¹⁸ Approved ESTA applications (ESTAs) are required of travelers who are traveling by air or sea to the U.S. under the Visa Waiver Program. Most citizens and nationals from visa waiver countries do not require a visa to travel to the United States for a period not exceeding 90 days; instead, they may apply for an ESTA approval, which is valid for two years or until their passport expires. ESTA holders are not required to provide a physical copy of a document. Rather, DHS can communicate their status to air carriers. See <https://esta.cbp.dhs.gov/> for more information on the ESTA program.

¹⁹ As discussed in footnote 14 above, CBP cannot require that a passenger be denied boarding. However, if an air carrier boards a passenger who is then denied entry to the United States, the air carrier may have to pay a penalty and bear the costs of transporting that passenger out of the United States.

information through APIS acquired during ticket reservation for validation. Carriers must submit all non-interactive and interactive batch transmission information at least 30 minutes prior to securing the aircraft doors, and all interactive individual passenger information transmission messages up to the time of securing the aircraft doors. Passenger information is automatically vetted against CBP databases and the terrorist watch list. CBP transmits vetting results back to the carrier in batches or through individual interactive messages, with one vetting response for each name uniquely identified in the transmission. During check-in, carriers may submit passenger information through APIS Quick Query in up to 10-person batches, with responses coming within 4 seconds. The Quick Query mode is often used to send updates for passengers whose information has already been submitted or for last minute ticket reservations. APIS Quick Query allows passengers to print their boarding passes at home or at an airport kiosk without consulting a gate agent.

Smaller carriers and charter carriers usually use a non-interactive, web-based portal called eAPIS to send uploaded manifest information through APIS for validation. Smaller carriers usually use eAPIS to avoid the costs of setting up and maintaining an interactive system. Many of these carriers fly infrequently and with small passenger counts. Those using eAPIS must submit information to CBP via the internet at least 30 minutes prior to securing the aircraft doors and will receive messages back electronically, usually through email. The response message contains vetting results and states whether the carrier should continue with printing boarding passes or boarding passengers. Because charters and small carriers generally have smaller passenger lists and fly less frequently, they do not require the same processing speeds enabled by an interactive system.

With APIS, carriers receive a response message from CBP noting whether individuals are cleared to board, require additional security screening, or are

recommended to be denied boarding based on checks against law enforcement databases. With eAPIS, carriers receive a single response message for the entire manifest, in the form of an email, stating whether the entire flight is cleared or not. In the event a flight is not cleared, additional processes will be developed such as the carrier logging back in to their eAPIS account for greater details on which passengers are not cleared and how they may resolve the issue.²⁰ The proposed rule requires carriers to receive additional data in the response message(s) they receive from CBP indicating whether each passenger's travel documents have been validated. Travel documents would be defined as any document or electronic record presented for travel to the United States, including DHS-approved travel documents, U.S.-issued visas, Electronic System for Travel Authorization (ESTA) approvals, and Electronic Visa Update System (EVUS) enrollments.²¹ Passengers cleared by CBP whose documents are validated may be issued a boarding pass automatically, online or at an airport kiosk.

With the addition of document validation to pre-flight APIS transmissions via the voluntary DVP, discussed in more detail below, carriers follow the same information collection and submission procedures as established in existing regulations and discussed above. When the travel document information gets to CBP, it undergoes an additional database check to validate the travel documents. The results of that additional check are returned to the carriers in the form of a character in the APIS response message they already receive. Carriers participating in DVP receive the same message as those not yet participating, but with the addition of the DVP-specific character indicating whether documents were validated against the CBP database. Any carrier not enrolled in the DVP would, under existing regulation, not receive the document validation part of the response

²⁰ No smaller carriers using the eAPIS system are currently enrolled in the voluntary DVP. This system and protocols will be developed as those carriers implement the program.

²¹ Chinese nationals holding a 10-year B1, B2, or B1/B2 visa must enroll in EVUS. *See* <https://www.cbp.gov/travel/international-visitors/electronic-visa-update-system-evus/frequently-asked-questions>.

message through APIS. In that case, the validity of documents is not confirmed via a CBP database check and would not affect whether the passenger or flight is cleared. Under the terms of the proposed rule, all commercial carriers transporting passengers must participate in document validation program, and CBP will work with carriers to implement changes to receive DVP response messages from CBP.

The response message from CBP includes characters indicating a passenger's status. Passenger information sent by commercial carriers is checked against various databases and the terrorist watch list, and the results are submitted to the carrier in the form of alphanumeric codes. For TSA information, numerical characters indicate statuses like cleared or selectee for further review, among others. Under current regulations, CBP includes a letter indicating the passenger's travel status. With the DVP, CBP can indicate particular document validation errors, such as valid ESTA on file, ESTA denial, no U.S. travel documents on file, or that CBP recommends the carrier not board the passenger. Some of these codes have been in use since interactive APIS was deployed, though CBP introduced new letters to accommodate the DVP.

Under current regulations and practices, errors can occur when a passenger submits their information to the carrier. This often happens when documents are damaged, smudged, or scanned incorrectly. Minor errors like a misspelled name or incorrectly recorded passport number may be fixed by the passenger. More egregious errors or errors a passenger cannot correct themselves would require the assistance of a carrier employee to complete the check-in process, or the need to contact CBP for assistance if unable to resolve the issue. In some instances, though, errors like a misspelled name remain in the APIS record during travel and would be corrected upon arrival. Under the DVP and the proposed rule, these simple errors may cause legitimate travel documents to not be validated. Such errors would, without DVP, either require

intervention by a carrier employee or be missed and only noted and corrected upon arrival. In some instances, failure to validate indicates intentional deception or fraud.

Often, a passenger traveling with a carrier participating in DVP whose documents are not validated when initially submitted as part of the check-in process can quickly identify an error like an incorrect birthdate while they are still online or at an airport kiosk attempting to check-in for a flight. They are then able to correct that information manually, by re-scanning the document or manually entering the data, and resubmitting. The documents will then be validated and the passenger may print their boarding pass without assistance from a carrier employee. However, if, after the information is submitted and the passenger has attempted any necessary corrections, a passenger's documents are still not validated, they may seek assistance from carrier staff to complete check-in. In the event the carrier employee is unable to validate the document by re-submitting the information or performing a manual check, they would need to work with CBP and the passenger to resolve the issue.²²

Before calling CBP, an agent for a DVP-enrolled carrier may re-submit the information in order to correct any entry errors or account for changes that have occurred since the document was issued. Passengers with multiple travel documents may be more likely to require assistance. This can occur, for example, if a dual citizen uses one passport to reserve his or her ticket and the other to check-in to the flight. Some passengers from Visa Waiver Program (VWP) countries who under other circumstances would not require a visa, must travel with a visa if, for instance, they are staying in the United States for longer than 90 days or attending an American university and may require additional help resubmitting information to validate those documents. Though

²² If a gate agent is unable to resolve a passenger issue, for example by manually checking for a visa, the gate agent may call CBP for assistance. CBP provides support to carriers via the Immigration Advisory Program and the Regional Carrier Liaison Group. See <https://www.cbp.gov/document/fact-sheets/immigration-advisory-program-iap> and <https://www.cbp.gov/travel/travel-industry-personnel/carrier-liaison-prog> for more information.

document validation automatically checks for a visa for a VWP passenger without an ESTA approval, carrier agents may need to check for a visa manually. Additionally, those passengers with multiple travel documents may re-submit their information, adding their second document, for validation. If a passenger's documents are still not validated, the carrier must contact CBP for resolution.

Carriers both enrolled and not enrolled in DVP and using the interactive system receive validation messages almost in real time or in batches of multiple passengers, which indicate whether CBP cleared each passenger. DVP-enrolled carriers also receive a message indicating whether CBP has validated their travel documents. All carriers using the non-interactive system receive a single response message for the entire manifest, in the form of an email, indicating whether the entire flight is cleared or not. If the flight is not cleared, the carrier may log in to their eAPIS account for greater detail to determine which passenger or passengers are at issue. Those enrolled in DVP will also receive validation information in their response messages. To resolve any issues they cannot resolve themselves, carriers must contact CBP regardless of DVP enrollment status.

Error in the APIS record regarding traveler documentation not identified and resolved by carriers before departure are generally identified and corrected by CBP Officers (CBPOs) during inspection once the passenger has arrived at a United States port of entry. CBPOs compare document information against APIS data and modify the APIS record to reflect the correct information when errors are identified. Adding document validation to the pre-departure APIS system checks would reduce the number of errors CBPOs would encounter and need to correct during inspections as passengers have a better opportunity to identify and resolve these errors themselves.

CBP began the voluntary DVP to test document validation in 2013. Because carriers were already required to submit information to APIS beginning in 2005,²³ the infrastructure to send and receive messages was already in place. Most large, commercial carriers have already incurred the cost of setting up an interactive system for communicating with APIS to comply with other regulations. Smaller carriers and charter carriers submit their information to CBP through eAPIS. This web portal allows information to be transmitted over the internet once the user has established an account. CBP does not believe that any carriers would choose to switch from eAPIS to APIS as a result of this proposed rule.

In the following sections, CBP provides a full accounting of the costs and benefits of the proposed rule, including during the regulatory period from 2022-2026, and the voluntary DVP period from 2013-2021.

Costs of the Rule

Technology Costs

To comply with this proposed rule, carriers would be required to ensure their systems can both transmit and receive messages. Because carriers already must use a CBP-certified system to connect to APIS, and any system already certified by CBP is able to receive messages, they face minimal or no costs to be able to receive the document validation message required by the proposed rule or to submit additional passenger information.²⁴ Because carriers participating in the voluntary DVP already have the systems in place to send passenger information and receive CBP response codes, they require no new technology. Carriers would not face additional technology maintenance costs to comply with this proposed rule. CBP does not anticipate that this

²³ Source: U.S. Department of Homeland Security, “Advance Passenger Information System Fact Sheet,” November 12, 2013, <https://www.cbp.gov/document/fact-sheets/advance-passenger-information-system-fact-sheet>. Accessed August 26, 2020.

²⁴ CBP bases this assumption on discussions between Office of Field Operations personnel and participating carriers.

proposed rule would cause any more carriers to switch to and bear the costs of adopting an interactive system.

CBP has already configured its system to check travel document information automatically against CBP databases, as well as to send and receive the appropriate messages. Development of the document validation system occurred in 2012 and 2013 and is discussed in detail in the *Voluntary Period* section below. The database of travel documents used in document validation was already built for use in other CBP programs. In the years since 2013, the DVP has cost CBP approximately \$500,000 per year for ongoing technological maintenance.²⁵ CBP has already established a channel of communication with other agencies, including the CDC, and would not need to make any updates in order to collect and share, when appropriate, additional passenger biographical information. Therefore, technology costs for the proposed rule would include \$500,000 per year in maintenance costs.

Time Costs to Resolve Errors

Under the current regulations, air carriers submit passenger data to CBP between 72 hours and 30 minutes before departure, and no later than securing the aircraft doors for interactive individual submissions. CBP systems automatically perform checks between the data and information stored in CBP databases. CBP sends response messages to the carriers indicating whether CBP has cleared each passenger for boarding or requires additional screening, or recommends the air carrier deny boarding, although under existing regulations there is no document validation message included. Once the flight arrives, passengers must go through CBP inspection where a CBPO checks their travel documents against APIS manifest information. Errors in the manifest data, such as misspellings or incorrect date information, are corrected at this time.

²⁵ Source: CBP's Office of Field Operations on Jan. 6, 2022.

By adding document validation to the checks CBP already runs on passenger information, many of the errors corrected by a CBPO during inspection upon arrival could be corrected by the passenger during the check-in process. For example, should the date of birth read incorrectly when a passenger scans their document pre-flight with their phone or at an airport kiosk, the document may not be validated and the passenger will receive an error message.²⁶ The passenger may review their data, correct the mistake, and resubmit their information. The document would then be validated and the passenger could automatically print the boarding pass. Without the DVP, the error might require the passenger to seek assistance from carrier employees or may not be caught before the boarding pass is printed, but would then be noticed by the CBPO, who would correct the APIS record during inspection after the flight arrives in the United States.

Some errors require the passenger to seek assistance and the carrier agent to call CBP to resolve an issue, though such calls are rare. Under DVP, passengers would correct the majority of errors either online or at an airport kiosk during check-in. These corrections would lead to an increase in the time spent by these passengers during check-in. CBP estimates that passengers needing to correct personal information average about 10 seconds in making the correction. Because they no longer spend about 20 seconds waiting for a CBPO to make the correction (discussed further in the *Benefits of the Rule* section below), this represents a partial burden transfer. Although passengers would spend an additional 10 seconds pre-flight to correct the error, they then save 20 seconds during processing. By allowing passengers to make their own corrections online or at a kiosk, the overall check-in process would be more efficient. Enabling passengers to correct errors themselves, whether it be a spelling mistake or the submission of the wrong

²⁶ The passenger does not see the response message from CBP. Instead, the passenger sees whatever error message the individual carrier uses in its system. That message is based upon the response from CBP. Such an error might direct the passenger to review the passenger's data and try submitting again or, in the case of a more egregious issue such as a recommendation not to board the passenger, might direct the passenger to seek assistance from a carrier employee.

document, allows them to continue using an automated check-in process rather than seeking assistance with manual validation. This would reduce time spent waiting in line for help, as well as the number of instances where carrier employees must manually validate documents or seek CBP assistance if they cannot resolve the error in some way. For example, a passenger traveling from a VWP country who does not have an ESTA but does have a valid visa would, without DVP, require assistance from carrier personnel because the system would not find an ESTA upon initial submission of passenger information. With DVP, the system automatically checks for a visa if an ESTA is not found, so the passenger could continue using the automated check-in process and would not require assistance. Air carriers participating in the DVP voluntarily have reported increased efficiency pre-flight.²⁷

For smaller carriers using the non-interactive, eAPIS system, the travel document error resolution process is similar to the interactive version. Carriers send in passenger data and receive a response message. Generally, the entire manifest is cleared, but should there be an issue, the carrier is notified via an email. The carrier may review the data to determine which passenger is at issue, then log back into their eAPIS account to re-submit corrected data. Should the problem not be resolvable by re-submitting corrected data, the carrier may call CBP for assistance in the same way as users of the interactive system. The vast majority of flights and passengers are processed through the interactive APIS system. Approximately 0.4 percent of passenger data is submitted via the non-interactive, eAPIS system.

Some errors and corrections would require carriers to call into a CBP support center for assistance. For example, if a passenger has a visa that appears valid, but the CBP response indicated it was not, the carrier agent may call to verify if the visa has been revoked. In another scenario, if a passenger's visa has been washed to remove the ink

²⁷ Source: discussion with the Office of Field Operations on July 28, 2020.

and the data altered, the DVP system would fail to validate the document and the carrier might call CBP to manually verify the information they see on the document.²⁸ These calls generally take no more than five minutes. CBP does not anticipate the number of calls for assistance to increase from pre-DVP levels, nor does CBP believe that either carriers or the support centers would need to increase staffing to accommodate additional calls.

Carriers not participating in DVP currently sometimes call CBP to verify travel documents. Using the automated process can confirm that a document is valid, which can prevent additional calls. CBP does not collect information on the frequency of these calls or what issues each call addresses and so cannot estimate how many calls would be prevented if passengers or carrier agents catch and correct a greater number of data errors as a result of mandating the DVP.

In total, CBP has already incurred technology costs described above in preparation for the proposed rule. Some passengers would experience an increased time burden during check-in in order to identify and correct errors in information submitted through APIS. CBP does not anticipate increased costs for air carriers as a result of the proposed rule.

Changes Conforming Regulations with Current Practices

CBP is making several changes to conform the regulations to current practice in this proposed rule, as described in the *Summary* section above. These changes are unlikely to result in increased costs to carriers, passengers or CBP. The changes, including updates to the requirements for close-out messages, removal of superfluous language from the regulations, and the replacement of “passport” with “DHS-approved travel document” would simplify the regulations without imposing an additional burden

²⁸ In this instance, if the document had been improperly altered, the document would not be validated and the passenger would not receive a boarding pass.

on carriers, passengers, or CBP. Because carriers already send close-out messages, the change to the requirements would not result in additional programming costs, technology investments, or an increased time burden for carrier personnel. It is common practice for carriers to transmit a message identifying only those individuals who boarded the flight. The other revisions reflect current practice or minor, clarifying changes.

Benefits of the Rule

To Passengers, Carriers, and CBP

As error correction is moved from CBP inspection to the pre-departure period, passengers and CBPOs would experience greater efficiency after flights have arrived in the United States. Because CBPOs would not need to re-run as much information or modify as many records, they would complete inspection of passengers more quickly, leading to shortened wait times for everyone. Because CBP has instituted a number of programs to reduce inspection wait times throughout the time that the voluntary DVP has been in place, it is impossible to estimate precisely the degree to which the DVP may have impacted overall wait times in the voluntary phase of the program. However, CBP believes it has contributed to faster overall processing.

Approximately 135,747,880 commercial passengers arrived in the United States by air in Fiscal Year (FY) 2019.²⁹ Over the 5-year period from FY 2015 to FY 2019, arrivals in the United States grew at a compound annual growth rate of 3.8 percent.³⁰ Over the 5-year period of analysis from FY 2022 to FY 2026, CBP projects that 820,115,824 commercial air passengers will arrive in the United States, assuming a

²⁹ The COVID-19 pandemic led to a significant decrease in passenger arrivals in both 2020 and 2021, so those years are excluded from calculations as highly anomalous. CBP also cannot predict when or if passenger arrivals might return to pre-2020 trends, so we have used data from 2015-2019 as a basis for passenger number projections.

³⁰ CBP is aware that the COVID-19 pandemic will likely reduce the volume of arriving travelers in the short run. Consequently, using historical growth rates and figures from FY 2015 to FY 2019 to estimate arriving passenger volumes for FY 2021 through FY 2025 will not reflect any impacts from the COVID-19 pandemic. It is not clear what level of reductions the pandemic will have on arriving passenger volumes or how CBP would estimate such an impact with any precision given available data. Therefore, the arriving passenger projections that CBP uses in this analysis may be overestimations for the period of analysis, resulting in potential overestimations of this proposed rule's costs and benefits.

continued growth rate of 3.84 percent per year. Under the terms of proposed rule, all arriving commercial air passengers would be subject to the DVP, rather than the 67 percent of commercial air passengers covered as of 2021 in the voluntary program. See Table 1 for historical passenger arrival data and Table 2 future projections.

Table 1. Historic Commercial Air Passenger Arrivals from FY 2015 - FY 2019

Fiscal Year	Arriving Passengers
2015	112,505,410
2016	119,253,895
2017	124,262,060
2018	130,833,520
2019	135,747,880
Total	622,602,765

Note: Estimates may not sum to total due to rounding.

Table 2. Projected Commercial Air Passenger Arrivals from FY 2022 – FY 2026

Fiscal Year	Arriving Passengers
2022	151,938,854
2023	157,754,144
2024	163,792,007
2025	170,060,963
2026	176,569,857
Total	820,115,824

Note: Estimates may not sum to total due to rounding.

Common errors corrected by CBPOs during inspections that would be corrected pre-flight with the DVP in place include a passenger's misspelled last name, incorrect date of birth, and incorrect document number. Based on a sampling of more than three million commercial passengers arriving in FY 2019, CBP estimates that 7.5 percent of passengers require a simple correction to their APIS record upon arrival at CBP inspection.³¹ Of those 7.5 percent of passengers that require a simple correction, CBP estimates based on its experience with the voluntary program that initially 50 percent

³¹ Source: email correspondence with the Office of Field Operations on August 11, 2020.

would be corrected pre-flight under the proposed rule, meaning that neither the passenger nor the CBPO would need to expend time in making corrections during CBP inspection. This would save each party about 20 seconds (0.0056 hours) per inspection. Note that the passenger would have spent about 10 seconds making the correction before the flight during the check-in process and, on average, would see a net time savings of about 10 seconds. The remaining 50 percent would continue to be resolved upon arrival when the CBPO processes the traveler.

Over the 5-year period of analysis, approximately 820,115,824 commercial passengers are projected to arrive in the United States by air. Under the baseline, approximately 67 percent of those passengers would arrive via carriers participating in the voluntary DVP as of 2021. Under the terms of the proposed rule, the remaining 33 percent of passengers would arrive on carriers newly required to join the DVP. We estimate that those passengers would experience 20,269,456 errors over 5 years. Under the proposed rule, about 50 percent, or 10,134,728 of those errors would be corrected pre-flight, saving CBPOs and air passengers \$6,181,058. This benefit estimate is based on a wage rate of \$86.23 for CBPOs and \$47.10 for air passengers, resulting in a combined wage rate of \$133.33.³² See Table 3 for a summary.

Individual time savings may also accumulate to create greater overall time savings for entire groups of arriving air passengers. If half of all passengers with a data error save 20 seconds each during CBP inspection, the passengers waiting behind them for inspection would also benefit from the effects of that 20 seconds saved per passenger.

³² Because both passengers and CBPOs would save time under the proposed rule, this wage rate encompasses both the wage rate of a CBPO (\$86.23) and the wage rate for an all-purpose air traveler (\$47.10). CBP bases this wage on the FY 2021 salary and benefits of the national average of CBP Officer Positions, which is equal to a GS-11, Step 9. Source: Email correspondence with CBP's Office of Finance on September 7, 2021. Source for the passenger wage rate: U.S. Department of Transportation, Office of Transportation Policy. The Value of Travel Time Savings: Departmental Guidance for Conducting Economic Evaluations Revision 2 (2016 Update), "Table 4 (Revision 2 - 2016 Update): Recommended Hourly Values of Travel Time Savings for Intercity, All-Purpose Travel by Air and High-Speed Rail." September 27, 2016. Available at <https://www.transportation.gov/sites/dot.gov/files/docs/2016%20Revised%20Value%20of%20Travel%20Time%20Guidance.pdf>. Accessed June 12, 2021.

CBP cannot reliably estimate the net impact of this time savings, because those passengers with errors to be corrected would be, in any given group, randomly dispersed among all the passengers. However, CBP does believe the proposed rule would result in additional time savings to passengers overall as individual time savings allow groups to move more quickly through CBP inspection.³³

Table 3. Summary of Benefits for Commercial Air Passengers and CBPOs
(Undiscounted 2021 U.S. Dollars)

Fiscal Year	Arriving Passengers Newly Affected	Errors Avoided	Time per Error (Hrs, CBP)	Time per Error (Hrs, Passenger)	Benefits
2022	50,139,822	1,877,612	0.0056	0.0028	\$1,145,134
2023	52,058,867	1,949,475	0.0056	0.0028	\$1,188,963
2024	54,051,362	2,024,089	0.0056	0.0028	\$1,234,469
2025	56,120,118	2,101,559	0.0056	0.0028	\$1,281,717
2026	58,268,053	2,181,994	0.0056	0.0028	\$1,330,774
Total	270,638,222	10,134,728	-	-	\$6,181,058

Note: Estimates may not sum to total due to rounding.

In addition to time savings from correcting errors earlier in the process, as a result of the proposed rule, fewer passengers would ultimately be denied entry upon arrival in the United States because their fraudulent or expired documents are discovered in CBP inspection, instead of before boarding. In FY 2022, carriers will incur penalties of \$6,215.00³⁴ for each boarded passenger who was subsequently denied entry, though penalties are modified or reduced for those carriers who have signed a Memorandum of Understanding with CBP regarding their penalty mitigation practices. Carriers are eligible for mitigation based on their violation records and status with CBP. Mitigated amounts are generally 25 percent or 50 percent of the base penalty. In addition to the penalty, carriers are responsible for the costs of returning the passenger to their home

³³ This analysis is performed from a global perspective and includes individuals who travel to the United States. Not all individuals benefiting from the proposed rule are U.S. citizens or permanent residents.

³⁴ Penalties are indexed to inflation. See Department of Homeland Security, Final Rule, “Civil and Monetary Adjustments for Inflation,” 87 FR 1317 (January 11, 2022).

country.³⁵ With the DVP, some passengers with fraudulent or improper documents may be identified before boarding, in which case the carrier may deny boarding, saving the air carrier both the cost of the penalty and the cost of securing and transporting the passenger out of the United States, which amounts to about \$10,000 for a single passenger.³⁶

The number of penalties that would be issued to air carriers for improperly transporting some passengers is difficult or close to impossible to predict. The average number of penalties issued annually between 2015 and 2019 was 415.³⁷ CBP cannot project the number of penalties that might be incurred over the coming years, but CBP's subject matter experts estimate that roughly 20 percent of penalties could be avoided due to the DVP.³⁸ Based on this rough estimate, carriers would avoid \$515,845 in penalty costs (2022 U.S. Dollars) per year as well as the costs to transport those individuals back to their home countries.

Benefits and Costs Not Estimated in this Analysis

CBP is unable to estimate some costs and benefits to carriers. For example, while air carriers already have a CBP-certified system to send and receive pre-flight messages, some air carriers may need to make programming improvements to handle the messages required by the proposed rule, though no participating carriers report burdensome programming costs. Therefore, these programming costs are expected to be minor and are generally built into overall technology maintenance budgets, making them impossible to separate. The potential benefits are equally difficult to estimate given variations in travel patterns, the impossibility of predicting when and how passengers may attempt to use fraudulent documents, and the fact that CBP has instituted several time-saving

³⁵ See 8 USC 1231(c)-(e).

³⁶ Source: discussions with the Office of Field Operations on July 28, 2020.

³⁷ As with passenger arrivals, the number of penalties per year was significantly affected by the flight cancellations and travel restrictions associated with the COVID-19 pandemic. Therefore, CBP has used penalty counts from 2015-2019. Data provided by CBP's Office of Regulations and Rulings.

³⁸ Source: discussions with the Office of Field Operations on July 28, 2020.

programs (such as Global Entry), which make separating out the time-savings from the DVP impossible.

Mandating the DVP would promote greater efficiency during the CBP inspection process at ports of entry as fewer passengers would require corrections to their information, which would lead to fewer missed flight connections and a better experience for all parties. Carriers enrolled in the voluntary DVP have also reported greater efficiency pre-flight. Additionally, by further enabling carriers to prevent individuals with fraudulent documents from boarding planes to the United States, the proposed rule would increase U.S. national security and safety, in addition to saving the carriers the cost of returning passengers.

The Voluntary Period

CBP began the voluntary DVP in 2013. Initially, a single carrier joined the program, representing about 1 percent of flights arriving in the U.S. that year. Over the next 8 years, 39 carriers joined the voluntary DVP.³⁹ The 40 total carriers participating in 2021 include the largest U.S. and foreign carriers and cover approximately 67 percent of flights. See Table 4 for more detail.

³⁹ Source: Office of Field Operations records, received on December 15, 2021.

Table 4. History of the Voluntary DVP

Year	Carriers Added	Cumulative Proportion of Flights (%)
2013	1	1
2014	3	12
2015	2	24
2016 ⁴⁰	13	47
2017	6	59
2018	9	63
2019	3	65
2020	2	66
2021	1	67
Total	40	67

Carriers participating in the voluntary DVP, the passengers on the flights offered by participants, and CBP all experienced costs and benefits during the voluntary period from 2013 to 2021. Though there are no fees to enroll in the voluntary DVP and no carrier was required to do so during the voluntary period, carriers may have experienced minor programming costs to ensure they were able to receive the additional codes included in CBP response messages.

Passengers faced no additional net costs as a result of the voluntary DVP. Some passengers would likely have faced additional time costs to resolve errors in the pre-flight check-in process, but those costs would have been outweighed by faster processing after the flight. See *Time Costs to Resolve Errors*, above, for more detail.

CBP incurred programing and IT development costs in 2012 and 2013, and maintenance costs throughout the voluntary period. The DVP's main IT development took place from 2012 to 2013 in preparation for the voluntary DVP. However, the development of the technical infrastructure for the program was a part of a larger series of IT improvements and integration during those years which connected CBP systems with TSA Secure Flight systems, upgraded existing database technology, and improved

⁴⁰ In 2016 and 2018, participating carriers merged, such that the number of participants was reduced by one, although passengers of those carriers were still covered by DVP.

data integration, response time, and coordination between the systems. The entire program cost \$12,893,000 over the two-year period, including initial development costs of \$7,493,000 and maintenance costs of \$2,700,000 per year for the two years.⁴¹ However, CBP works to efficiently add technological changes that can support multiple efforts, saving costs for both government and industry, so it is challenging to appropriately allocate these costs among programs. Many of the IT upgrades would have been undertaken without the inclusion of the DVP and the current technological backbone behind the DVP also serves other programs, specifically, TSA’s Secure Flight, as well as the CBP ESTA and EVUS programs. Additionally, because these IT costs cannot be recovered by not pursuing the proposed rule, CBP considers them a sunk cost. See Table 5 for a summary of IT development costs.

Table 5. IT Development Costs for the DVP and Other IT Improvements (2021 U.S. Dollars)

Year	Development Cost	Maintenance Cost	Total Cost
2012	\$5,887,000	\$2,700,000	\$8,587,000
2013	\$1,606,000	\$2,700,000	\$4,306,000
Total	\$7,493,000	\$5,400,000	\$12,893,000

All three parties did benefit from participation in the DVP as well, saving time during pre-flight check-in and post-flight processing. These costs and benefits all accrued during the voluntary period and cannot be recovered should the proposed rule not move forward. Therefore, these costs and benefits are excluded from the overall costs of the proposed rule during the regulatory period. See Table 6 for a quantification of the benefits during the voluntary period. Costs and benefits are based on a time savings of 20 seconds and a wage rate of \$86.23 for CBPOs and a time savings of 10 seconds (net) and a wage rate of \$47.10 for commercial air passengers, as well as an error correction

⁴¹ Source of IT cost information and timing: CBP’s Office of Information and Technology on December 16, 2021.

rate of 50 percent for 7.5 percent of passengers requiring them, all discussed in more detail above.⁴²

Table 6. Benefits During the Voluntary Period (2021 U.S. Dollars)

Fiscal Year	Arriving Commercial Air Passengers	Passengers in the DVP	Errors (7.5% x DVP Passengers)	Avoided (50% of Errors)	Benefit (CBP + Passengers)
2013	102,221,415	1,022,214	76,559	38,279	\$23,346
2014	107,048,937	12,845,872	962,092	481,046	\$293,385
2015	112,505,410	27,001,298	2,022,263	1,011,131	\$ 616,678
2016	119,253,895	56,049,331	4,197,816	2,098,908	\$1,280,101
2017	124,262,060	73,314,615	5,490,900	2,745,450	\$1,674,419
2018	130,833,520	82,425,118	6,173,231	3,086,616	\$1,882,493
2019	135,747,880	88,236,122	6,608,447	3,304,223	\$2,015,209
2020	140,943,478	93,022,696	6,966,937	3,483,469	\$2,124,529
2021	146,337,933	98,046,415	7,343,189	3,671,594	\$2,239,265
Total	972,816,595	433,917,266	32,498,244	16,249,122	\$12,149,424

Over the years of the voluntary period following IT development in 2012, CBP estimates that the DVP cost approximately \$500,000 per year in ongoing technical operation and maintenance costs.⁴³ See Table 7 for a summary of the net benefits of the voluntary period.⁴⁴

Table 7. Net Benefits During the Voluntary Period

Year	Benefit	Cost	Net Benefit
2013	\$23,346	\$500,000	-\$476,654
2014	\$293,385	\$500,000	-\$206,615
2015	\$616,678	\$500,000	\$116,678
2016	\$1,280,101	\$500,000	\$780,101
2017	\$1,674,419	\$500,000	\$1,174,419
2018	\$1,882,493	\$500,000	\$1,382,493
2019	\$2,015,209	\$500,000	\$1,515,209
2020	\$2,124,529	\$500,000	\$1,624,529
2021	\$2,239,265	\$500,000	\$1,739,265

⁴² CBP bases this wage on the FY 2021 salary and benefits of the national average of CBP Officer Positions, which is equal to a GS-11, Step 9. Source: Email correspondence with CBP's Office of Finance on September 7, 2021. Source for the passenger wage rate: U.S. Department of Transportation, Office of Transportation Policy. The Value of Travel Time Savings: Departmental Guidance for Conducting Economic Evaluations Revision 2 (2016 Update), "Table 4 (Revision 2 - 2016 Update): Recommended Hourly Values of Travel Time Savings for Intercity, All-Purpose Travel by Air and High-Speed Rail." September 27, 2016. Available at <https://www.transportation.gov/sites/dot.gov/files/docs/2016%20Revised%20Value%20of%20Travel%20Time%20Guidance.pdf>. Accessed June 12, 2020.

⁴³ Source: CBP's Office of Field Operations on January 6, 2022.

⁴⁴ CBP does not include the development costs identified in Table 5, above, because CBP is unable to isolate the costs CBP incurred solely for DVP from all of the IT upgrades made at the same time.

Total	\$12,149,424	\$4,500,000	\$7,649,424
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Net Impact of the Rule

The proposed rule would result in \$6,181,058 in undiscounted gross benefits (*i.e.*, cost savings) to air carriers, CBP, and passengers from FY 2022-2026. See Table 8 for a summary of these benefits. CBP estimates the undiscounted net benefits of the proposed rule to total \$3,681,058 over a 5-year period, as CBPOs and air passengers save time and air carriers face fewer penalties and associated costs. The proposed rule therefore results in a net benefit ranging from \$2,992,942 to \$3,359,080 discounted at either seven or three percent. The annualized net benefit comes to approximately \$730,000 using either rate.

Table 8. Net Benefits Summary (Undiscounted 2021 U.S. Dollars)

Fiscal Year	Total Benefit of Rule	Total Costs of Rule	Net Benefits
2022	\$1,145,134	\$500,000	\$645,134
2023	\$1,188,963	\$500,000	\$688,963
2024	\$1,234,469	\$500,000	\$734,469
2025	\$1,281,717	\$500,000	\$781,717
2026	\$1,330,774	\$500,000	\$830,774
Total	\$6,181,058	\$2,500,000	\$3,681,058

Note: Estimates may not sum to total due to rounding.

Table 9. Net Present Value and Annualized Benefits (2021 U.S. Dollars)

3% Discount Rate		7% Discount Rate	
Present Value Benefit	Annualized Benefit	Present Value Benefit	Annualized Benefit
\$3,359,080	\$733,470	\$2,992,941	\$729,950

Table 10. OMB Circular A-4 Accounting Statement: Classification of Rule's Impacts, FY 2022-FY 2026 (2021 U.S. Dollars)

	3% Discount Rate		7% Discount Rate	
	Present Value	Annualized	Present Value	Annualized
Total Cost				
Monetized	\$2,289,854	\$500,000	\$2,050,099	\$500,000
Non-Monetized, but Quantified	--	--	--	--
Non-Monetized and	--	--	--	--

Non-Quantified				
Total Benefit				
Monetized	\$5,648,934	\$1,233,470	\$5,043,040	\$1,229,950
Non-Monetized, but Quantified	--	--	--	--
Non-Monetized and Non-Quantified	Greater efficiency and passenger satisfaction in pre-boarding; improved national security; participant enthusiasm; fewer penalties for carriers following entry denial of a passenger; faster post-flight processing.			
Total Net Benefit				
Monetized	\$3,359,080	\$733,470	\$2,992,941	\$729,950
Non-Monetized, but Quantified	--	--	--	--
Non-Monetized and Non-Quantified	Benefits: Greater efficiency and passenger satisfaction in pre-boarding; improved national security; participant enthusiasm; fewer penalties for carriers following entry denial of a passenger; faster post-flight processing.			

Note: Estimates may not sum to total due to rounding.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule.

This proposed rule would not have a significant economic impact on small businesses or entities. All of the estimated costs are to the federal government instead of carriers. Although some small businesses, particularly smaller charter carriers, would be required to comply with the requirements of the proposed rule, the necessary systems are already in place because of other programs. CBP does not anticipate that these entities would need to upgrade their technology to comply with the proposed rule. Smaller carriers that currently transmit data through non-interactive submissions are currently also required to compare the travel document presented by the passenger with the information it is transmitting to CBP, in order to ensure that the information is correct,

the document appears to be valid for travel to the United States, and the passenger is the person to whom the travel document was issued. The DVP will support small entities in meeting this requirement by providing a response message on whether the data submitted matches to a valid document or not. Charter carriers would also likely benefit from increased efficiency for their customers moving through CBP inspection. CBP thus certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The collections of information in this document will be submitted for OMB review in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651-0088. An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. The collections of information for this rulemaking are included in an existing collection for the automated information collection system, APIS, under the OMB control number 1651-0088.

This proposed rule would, among other things, require commercial air carriers to transmit additional data elements to CBP before departure of flights bound for the United States. These elements include a passenger's phone number with country code, alternative phone number with country code, email address, and address while in the United States. Because the passenger generally provides most of these data elements when booking a ticket for air travel and the carrier then forwards this information to CBP, the estimated time burden for this information collection has not increased. While private aircraft pilots, bus, and rail carriers are covered by this information collection, they are unaffected by the proposed rule.

Comments should be submitted to CBP per the instructions outlined in the introductory text of this proposed rulemaking, as CBP is not currently accepting

comments via mail due to COVID-19. The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs).

Passenger and Crew Manifest

Commercial Air Carriers:

Estimated Number of Respondents: 1,130

Estimated Number of Total Annual Responses: 1,850,878

Estimated Time per Response: 10 minutes

Estimated Total Annual Burden Hours: 307,246

Commercial Air Carrier Passengers (3rd party):

Estimated Number of Respondents: 184,050,663

Estimated Number of Total Annual Responses: 184,050,663

Estimated Time per Response: 10 seconds

Estimated Total Annual Burden Hours: 496,937

Private Aircraft Pilots:

Estimated Number of Respondents: 460,000

Estimated Number of Total Annual Responses: 460,000

Estimated Time per Response: 15 minutes

Estimated Total Annual Burden Hours: 115,000

Commercial Passenger Rail Carrier:

Estimated Number of Respondents: 2

Estimated Number of Total Annual Responses: 9,540

Estimated Time per Response: 10 minutes

Estimated Total Annual Burden Hours: 1,590

Bus Passenger Carrier:

Estimated Number of Respondents: 9

Estimated Number of Total Annual Responses: 309,294

Estimated Time per Response: 15 minutes

Estimated Total Annual Burden Hours: 77,324

D. Privacy

CBP seeks input from the public regarding whether the data should be retained, used, and shared under the terms of the current APIS data, and if not, what use, retention, and sharing limitations are appropriate. CBP will also consult with the DHS Privacy Office, Office for Civil Rights and Civil Liberties, and Office of General Counsel regarding these questions. CBP will ensure that all Privacy Act requirements and DHS Privacy policies and guidance are adhered to in the implementation of this proposed rule.⁴⁵ CBP will issue or update any necessary Privacy Impact Assessment and/or Privacy Act System of Records notice to outline processes fully and ensure compliance with Privacy Act protections.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 requires agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule will not result in the expenditure by State, local, and

⁴⁵ Comments regarding minimization of impacts on privacy, civil rights, and civil liberties should be submitted per the instructions outlined in the introductory text of this proposed rulemaking. Due to COVID-19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

VII. Signing Authority

The signing authority for these amendments falls under 19 CFR 0.2(a). Accordingly, this document is signed by the Secretary of Homeland Security (or his delegate).

List of Subjects in 19 CFR Part 122

Air carriers, Aircraft, Airports, Reporting and recordkeeping requirements, Security measures.

Proposed Regulatory Amendments

For the reasons stated in the preamble, U.S. Customs and Border Protection proposes to amend 19 CFR part 122 as follows:

19 CFR PART 122 – AIR COMMERCE REGULATIONS

1. The authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1415, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

Section 122.22 is also issued under 46 U.S.C. 60105.

Section 122.49a also issued under 8 U.S.C. 1101, 1221, 19 U.S.C. 1431, 49 U.S.C. 44909.

Section 122.49b also issued under 8 U.S.C. 1221, 19 U.S.C. 1431, 49 U.S.C. 114, 44909.

Section 122.49c also issued under 8 U.S.C. 1221, 19 U.S.C. 1431, 49 U.S.C. 114, 44909.

Section 122.49d also issued under 49 U.S.C. 44909(c)(3).

Section 122.75a also issued under 8 U.S.C. 1221, 19 U.S.C. 1431.

Section 122.75b also issued under 8 U.S.C. 1221, 19 U.S.C. 1431, 49 U.S.C. 114.

2. Amend § 122.49a by:

- a. In paragraph (a), adding in alphabetical order the definitions for “DHS-approved travel document” and “Travel document”;
- b. Revising paragraph (b)(1)(i);
- c. Revising the last two sentences in paragraph (b)(1)(ii)(B);
- d. Revising the last two sentences in paragraph (b)(1)(ii)(C);
- e. Revising paragraph (b)(3) introductory text, and paragraphs (b)(3)(vii) through (x), (xii), and (xviii) through (xxii);
- f. Adding paragraphs (b)(3)(xx) through (xxii);
- g. Redesignating paragraphs (c) through (e), as paragraphs (d) through (f); respectively; and
- h. Adding a new paragraph (c).

The revisions and additions read as follows:

§ 122.49a Electronic manifest requirement for passengers onboard commercial aircraft arriving in the United States.

(a) * * *

DHS-approved travel document. “DHS-approved travel document” means a document approved by the U.S. Department of Homeland Security for travel in or out of the United States, such as a passport, or other Western Hemisphere Travel Initiative (WHTI) approved document.

* * * * *

Travel document. “Travel document” means any document or electronic record presented for travel to or from the United States, including DHS-approved travel

documents, U.S.-issued visas, Electronic System for Travel Authorization (ESTA) approvals, and Electronic Visa Update System (EVUS) enrollments.

* * * * *

(b) * * *

(1) * * *

(i) *Basic requirement.* Except as provided in paragraph (d) of this section, an appropriate official of each commercial aircraft (carrier) arriving in the United States from any place outside the United States must transmit to the Advance Passenger Information System (APIS) (referred to in this section as the U.S. Customs and Border Protection (CBP) system), the electronic data interchange system approved by CBP for such transmissions, an electronic passenger arrival manifest covering all passengers checked in for the flight. A passenger manifest must be transmitted separately from a crew member manifest required under § 122.49b. The passenger manifest must be transmitted to the CBP system at the place and time specified in paragraph (b)(2) of this section, in the manner set forth under paragraph (b)(1)(ii) of this section.

(ii) * * *

(B) * * * No later than 30 minutes after the securing of the aircraft, the carrier must transmit to the CBP system a message reporting all passengers onboard the flight. The message must identify the passengers by a unique identifier selected or devised by the carrier or by specific passenger data (*e.g.*, name) and may include the aircraft's registration number.

(C) * * * No later than 30 minutes after the securing of the aircraft, the carrier must transmit to the CBP system a message reporting all passengers onboard the flight. The message must identify the passengers by a unique identifier selected or devised by the carrier or by specific passenger data (*e.g.*, name) and may include the aircraft's registration number.

* * * * *

(3) *Information required.* Except as provided in paragraph (d) of this section, the electronic passenger arrival manifest required under paragraph (b)(1) of this section must contain the following information for all passengers:

* * * * *

(vii) DHS-approved travel document type (*e.g.*, P = passport; A = alien registration card), if a DHS-approved travel document is required;

(viii) DHS-approved travel document number, if a DHS-approved travel document is required;

(ix) DHS-approved travel document country of issuance, if a DHS-approved travel document is required;

(x) DHS-approved travel document expiration date, if a DHS- approved travel document is required;

* * * * *

(xii) Address while in the United States (number and street, city, state, and zip code), except that this information is not required for persons who are in transit to a location outside the United States;

* * * * *

(xviii) Flight number;

(xix) Date of aircraft arrival;

(xx) Phone number with country code;

(xxi) Alternative phone number with country code; and

(xxii) Email address.

(c) *Document Validation Message and Requirements—(1) Document Validation Message.* After the submission of the required information in paragraph (b)(3) of this section, the carrier will receive a document validation message from CBP. The message

and carrier requirements vary depending on whether the carrier is using an interactive transmission method or a non-interactive transmission method.

(i) *Carriers using an interactive transmission method.* (A) For carriers using an interactive transmission method, the CBP system will respond to the carrier with a document validation message stating whether the CBP system validated each passenger's travel documents.

(B) The carrier must ensure its interactive transmission system is capable of receiving the document validation message.

(C) Except as provided in paragraph (c)(1)(i)(D) of this section, if the document validation message states that the CBP system was unable to validate a passenger's travel documents, the carrier must contact CBP to resolve that passenger's travel document status prior to issuing a boarding pass to or boarding that passenger.

(D) To facilitate the document validation process, prior to contacting CBP as required by paragraph (c)(1)(i)(C), the carrier may transmit additional biographical information as listed in paragraph (b)(3) of this section.

(ii) *Carriers using a non-interactive transmission method.* (A) For carriers using a non-interactive transmission method, the CBP system will respond to the carrier with a document validation message stating whether the CBP system cleared the flight.

(B) The carrier must ensure it is capable of receiving the document validation message through a non-interactive method, such as email.

(C) If the document validation message states that the CBP system was unable to clear the flight, the carrier must contact CBP prior to issuing any boarding passes or boarding any passengers for that flight.

(2) *Recommendation Not to Board.* If CBP is unable to validate a passenger's travel documents, CBP will recommend that the carrier not board the passenger.

* * * * *

3. Amend § 122.75a by:

a. Revising paragraph (b)(1)(i);

b. Revising the last two sentences in paragraph (b)(1)(ii)(B);

c. Revising the last two sentences in paragraph (b)(1)(ii)(C);

d. Revising paragraph (b)(3) introductory text, and paragraphs (b)(3)(vi) through (ix);

e. Redesignating paragraphs (c) through (e), as paragraphs (d) through (f) respectively; and

f. Adding a new paragraph (c).

The revisions and additions read as follows:

§ 122.75a Electronic manifest requirement for passengers onboard commercial aircraft departing from the United States.

* * * * *

(b) * * *

(1) * * *

(i) *Basic requirement.* Except as provided in paragraph (d) of this section, an appropriate official of each commercial aircraft (carrier) departing from the United States en route to any port or place outside the United States must transmit to the Advance Passenger Information System (APIS) (referred to in this section as the U.S. Customs and Border Protection (CBP) system), the electronic data interchange system approved by CBP for such transmissions, an electronic passenger departure manifest covering all passengers checked in for the flight. A passenger manifest must be transmitted separately from a crew member manifest required under § 122.75b. The passenger manifest must be transmitted to the CBP system at the place and time specified in paragraph (b)(2) of this section, in the manner set forth under paragraph (b)(1)(ii) of this section.

(ii) * * *

(B) * * * No later than 30 minutes after the securing of the aircraft, the carrier must transmit to the CBP system a message reporting all passengers onboard the flight. The message must identify the passengers by a unique identifier selected or devised by the carrier or by specific passenger data (*e.g.*, name) and may include the aircraft's registration number.

(C) * * * No later than 30 minutes after the securing of the aircraft, the carrier must transmit to the CBP system a message reporting all passengers onboard the flight. The message must identify the passengers by a unique identifier selected or devised by the carrier or by specific passenger data (*e.g.*, name). The message may include the aircraft's registration number.

* * * * *

(3) *Information required.* The electronic passenger departure manifest required under paragraph (b)(1) of this section must contain the following information for all passengers:

* * * * *

(vi) DHS-approved travel document type (*e.g.*, P = passport; A = alien registration card), if a DHS-approved travel document is required;

(vii) DHS-approved travel document number, if a DHS-approved travel document is required;

(viii) DHS-approved travel document country of issuance, if a DHS-approved travel document is required;

(ix) DHS-approved travel document expiration date, if a DHS-approved travel document is required;

* * * * *

(c) *Document Validation Message and Requirements—(1) Document Validation Message.* After the submission of the required information in paragraph (b)(3) of this

section, the carrier will receive a document validation message from CBP. The message and carrier requirements vary depending on whether the carrier is using an interactive transmission method or a non-interactive transmission method.

(i) *Carriers using an interactive transmission method.* (A) For carriers using an interactive transmission method, the CBP system will respond to the carrier with a document validation message stating whether the CBP system validated each passenger's travel documents.

(B) The carrier must ensure its interactive transmission system is capable of receiving the document validation message.

(C) Except as provided in paragraph (c)(1)(i)(D) of this section, if the document validation message states that the CBP system was unable to validate a passenger's travel documents, the carrier must contact CBP to resolve that passenger's travel document status prior to issuing a boarding pass to or boarding that passenger.

(D) To facilitate the document validation process, prior to contacting CBP as required by paragraph (c)(1)(i)(C), the carrier may transmit additional biographical information as listed in paragraph (b)(3) of this section.

(ii) *Carriers using a non-interactive transmission method.* (A) For carriers using a non-interactive transmission method, the CBP system will respond to the carrier with a document validation message stating whether the CBP system cleared the flight.

(B) The carrier must ensure it is capable of receiving the document validation message through a non-interactive method, such as email.

(C) If the document validation message states that the CBP system was unable to clear the flight, the carrier must contact CBP prior to issuing any boarding passes or boarding any passengers for that flight.

(2) *Recommendation Not to Board.* If CBP is unable to validate a passenger's travel documents, CBP will recommend that the carrier not board the passenger.

* * * * *

Alejandro N. Mayorkas,

Secretary,

U.S. Department of Homeland Security.

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